No. 82-1757

IN THE

Supreme Court of the United States

October Term, 1983

BUDGET RENT-A-CAR OF WASHINGTON-OREGON, INC.,

Petitioner,

vs.

THE HERTZ CORPORATION and NATIONAL CAR RENTAL SYSTEM, INC.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF IN OPPOSITION

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STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

In addition to the statutes and constitutional provisions cited in the petition, the following additional statutes are

*Pursuant to Rule 28.1, respondents certify that the parent company of The Hertz Corporation is RCA Corporation and that the parent company of National Car Rental System, Inc. is Household International, Inc. Neither respondent has subsidiaries or affiliates whose disclosure is required by Rule 28.1.

involved in this case and are set forth in the Appendix hereto:

Washington Revised Code:
Section 14.08.020
Section 14.08.120
Section 53.08.220
Oregon Revised Statutes:
Section 492.310
Section 492.320
Section 778.025

INTRODUCTION

Petitioner, Budget of Washington-Oregon, Inc. ("Budget"), is asking this Court to review a decision of a unanimous panel of the Court of Appeals for the Ninth Circuit affirming the trial court's grant of summary judgment for respondents, The Hertz Corporation ("Hertz") and National Car Rental System, Inc. ("National"), on the basis of the *Noerr-Pennington* doctrine.[1] This is the second attempt by Budget to obtain review of the panel's decision, the first being a petition for rehearing with a suggestion for rehearing en banc, which the Ninth Circuit unanimously rejected.

Notwithstanding the long and convoluted petition for certiorari, it is entirely clear that this case does not involve any conflict among courts of appeals or any unsettled or novel issue meriting elucidation by this Court. In fact, Budget's main argument stems from the fact that one dis-

[1]The *"Noerr-Pennington* doctrine" is used to refer to this Court's decisions in *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961), and *United Mine Workers v. Pennington*, 381 U.S. 657 (1965). The doctrine also includes the Court's decision in *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508 (1972).

trict judge initially decided in its favor by carving out a "commercial exception" to the *Noerr-Pennington* doctrine and then a second district judge, acting in the same litigation, rejected that exception and decided adversely to Budget. While there was, indeed, a conflict between *district judges* in the Ninth Circuit, resolution of that conflict was the task of the court of appeals for the Ninth Circuit, which has now done just that.

The decision of the Court of Appeals that there is no "commercial exception" to *Noerr-Pennington* is fully consistent with this Court's decisions; indeed, any contrary result would be inconsistent, unworkable, and constitutionally suspect. The courts of appeals that have addressed the issue have done so along the same lines as the Ninth Circuit.

Budget also raises a second issue, one highly contrived, which would make the *Noerr-Pennington* doctrine inapplicable unless state officials could claim immunity under the doctrine of *Parker v. Brown*, 317 U.S. 341 (1943). This issue fails to recognize the separate underlying bases for these two doctrines, which are not required to be applied in lockstep. No court has ever held that *Parker* immunity for state officials is a pre-requisite for application of the *Noerr-Pennington* doctrine.

STATEMENT

Budget is a plaintiff in one of eleven treble-damage antitrust actions consolidated in the Northern District of California under the caption "In re: Airport Car Rental Antitrust Litigation" (MDL 338).

In its complaint (filed in October 1977), Budget claimed that Hertz, National and Avis Rent-A-Car System, Inc.

("Avis") had conspired to preclude it from obtaining airport car rental concessions at the Seattle-Tacoma International Airport, the Spokane International Airport, and the Portland International Airport. Although Budget alleged that Hertz, Avis, and National had combined in a wide range of conduct to foreclose Budget from airport concessions, extensive discovery revealed that, as to the three airports as to which Budget was asserting a claim, Hertz, Avis, and National had done no more than jointly urge the airport authorities to adopt eligibility criteria and contractual requirements that had the effect of foreclosing and delaying Budget's entry into the market.[2]

Having developed this record, Hertz and National moved for summary judgment against Budget on the ground that their activities were protected by the *Noerr-Pennington* doctrine.[3]

As Budget points out in the petition for certiorari, a year earlier, Hertz, Avis, and National had moved for summary judgment with regard to three other airports—Austin, Miami and Denver. The judge originally assigned to MDL 338, The Honorable Charles B. Renfrew, denied the motion. *In Re Airport Car Rental Antitrust Litigation,* 474 F. Supp. 1072 (N.D. Cal. 1979). Judge Renfrew held that there was a "commercial exception" to the *Noerr-Pennington* doctrine, that he could not rule as a matter of law that

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[2]*In Re Airport Car Rental Antitrust Litigation: Budget Rent-A-Car of Washington-Oregon, Inc. v. Hertz Corp.,* 693 F.2d 84 (9th Cir. 1982), Appendix A to petition, p. A-2; *In Re Airport Car Rental Antitrust Litigation,* 521 F. Supp. 568 (N.D. Calif. 1981), Appendix B to petition, pp. B-32-35. The defendants were in no sense wholly successful in excluding Budget from these airports. Budget obtained an on-airport car rental concession at Spokane in 1969, at Seattle-Tacoma in 1972, and at Portland in 1973. (CR 482 at Exhibits 3 and 10; CR 482 at 37-44).

[3]Avis had settled with Budget prior to the filing of the motion.

the relevant activities of the public officials at the Austin, Miami and Denver airports were "governmental" rather than "commercial" in nature, and that the issue should be decided only on a full factual record at trial. As an underlying rationale for his decision, Judge Renfrew theorized that it was necessary to create a "commercial exception" to the *Noerr-Pennington* doctrine in order to harmonize that doctrine with the "state action immunity" doctrine arising from *Parker v. Brown.*

The Hertz and National motion for summary judgment against Budget came on for hearing before Judge William W. Schwarzer, who had succeeded Judge Renfrew as the judge assigned to MDL 338. Judge Schwarzer granted the motion and wrote a lengthy opinion. *In Re Airport Car Rental Antitrust Litigation,* 521 F.Supp. 568 (N.D. Cal. 1981).

In his opinion, Judge Schwarzer determined that Budget could show no more than that Hertz and National had successfully petitioned the airport officials to exclude, limit, or delay airport entry by Budget. He concluded that any restraint on Budget was the result of valid governmental action (*i.e.,* authorized decisions of airport authorities) to which the antitrust laws did not apply. Judge Schwarzer relied upon the express language in *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.,* 365 U.S. 127, 135-36 (1961):

> "We accept, as the starting point for our consideration of the case, the same basic construction of the Sherman Act adopted by the courts below—that no violation of the Act can be predicated upon mere attempts to influence the passage or enforcement of laws. . . . Accordingly, it has been held that where a restraint upon trade or monopolization is the result

of valid governmental action, as opposed to private action, no violation of the Act can be made out."

In addition, Judge Schwarzer went on to find that the *Noerr-Pennington* doctrine protected Hertz and National's activities; that there is no "commercial exception" to the *Noerr-Pennington* doctrine; that even if there were such an exception, the actions of public officials that Hertz and National sought to influence were clearly governmental in nature; and that Budget had failed to adduce facts sufficient to bring the case within the so-called "sham exception" to *Noerr-Pennington* laid down in *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508 (1972).

The Court of Appeals for the Ninth Circuit affirmed Judge Schwarzer's decision. *In Re Airport Car Rental Antitrust Litigation*, 693 F.2d 84 (9th Cir. 1982). In an opinion by Judge Choy (speaking for a panel that also included Judges Sneed and Farris), the Court of Appeals held that the activities shown by Budget constituted mere petitioning of governmental authorities, to which *Noerr-Pennington* clearly applied. The Court of Appeals held that Hertz and National did not lose their *Noerr-Pennington* protection because their petitioning may have constituted "commercial" speech or because it was directed towards subordinate non-elected state officials. Finally, the Court of Appeals refused to create a "commercial" exception to the *Noerr-Pennington* doctrine, pointing out that none of the authorities relied on by Budget in fact established such an exception to *Noerr-Pennington* and that there was no need to create such an exception in order to assure "symmetry" between the *Noerr-Pennington* doctrine and the *Parker v. Brown* doctrine, since these doctrines are based

on entirely separate considerations and are intended to protect and safeguard entirely different interests.

The Court of Appeals unanimously denied rehearing.

ARGUMENT

The petition for a writ of certiorari does not present any issue warranting review by this Court. It purports to raise two questions: (1) whether there is a "commercial exception" to *Noerr-Pennington*, and (2) whether *Noerr-Pennington* exempts private petitioners from the antitrust laws in circumstances where the petitioned officials would not enjoy *Parker* immunity. In the context of this case, neither question merits review by this Court.

I.

THE COURT OF APPEALS CORRECTLY FOUND THAT THERE IS NO COMMERCIAL EXCEPTION TO THE NOERR-PENNINGTON DOCTRINE

A. The Court of Appeals Decision Follows the Decisions of This Court.

Petitioner seeks to create an exception to *Noerr-Pennington* that this Court never saw fit to recognize in *Noerr* or any of its progeny. "The *Noerr-Pennington* doctrine establishes the general rule that lobbying or other efforts by businessmen to obtain legislative, executive or judicial action will not violate the antitrust laws, even though the purpose of their efforts may be to eliminate competition or otherwise restrain trade." *Ernest W. Hahn, Inc. v. Codding*, 615 F.2d 830, 834 n.1 (9th Cir. 1980). In *City of Lafayette v. Lousiana Power & Light Co.*, 435 U.S. 389 (1978), this Court reiterated the underpinnings of the *Noerr-Pennington* doctrine (435 U.S. at 399):

> ". . . In *Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127 (1961), the Court held that, regardless of anticompetitive purpose or intent, a concerted effort by persons to influence lawmakers to enact legislation beneficial to themselves or detrimental to competitors was not within the scope of the antitrust laws. Although there is nothing in the language of the statute or its history which would indicate that Congress considered such an exclusion, the impact of two correlative principles was held to require the conclusion that the presumption should not support a finding of coverage. The first is that a contrary construction would impede the open communication between the polity and its lawmakers which is vital to the functioning of a representative democracy. Second, 'and of at least equal significance,' is the threat to the constitutionally protected right of petition which a contrary construction would entail."

There can be no doubt that, on its face, *Noerr-Pennington* protects any joint efforts by Hertz, Avis, and National to influence the public officials operating the three airports in the performance of their official duties. This is true even if those duties may be characterized as "commercial" in nature. The decisions of this Court that establish the *Noerr-Pennington* doctrine—*Noerr, Pennington* and *California Motor Transport*—do not withdraw the immunity from attempts to influence public officials who are engaged in so-called "commercial" activities. To the contrary, the very activity that the defendants in *Pennington* sought to influence was, in large part, "commercial," as Budget would use the term.

Thus a prominent aspect of the conspiracy alleged in *Pennington* was a joint effort to convince the Tennessee Valley Authority "to curtail its spot market purchases" of

coal. 381 U.S. at 660. The TVA's purchase of coal could hardly be anything other than a "commercial" activity as Budget defines that term. Yet this Court did not for a moment indicate that the "commercial" nature of TVA's activity would, in any way, affect the availability of *Noerr* protection. If the Court had contemplated a "commercial" exception to *Noerr*, it surely would have made reference to such an exception in *Pennington*.

Even where state officials sought immunity under *Parker*, a situation where a commercial exception might have been more pertinent, this Court specifically rejected any such exception. In *City of Lafayette, supra*, eight of the nine members of the Court specifically rejected a proposal by the Chief Justice that a "commercial-governmental" distinction be used as a basis for deciding when *Parker* immunity should or should not apply to municipal officers.[4] As Justice Stewart pointed out (in a separate opinion in which Justices White, Blackmun and Rehnquist joined), "the distinction between 'proprietary' and 'governmental' activities has aptly been described as a quagmire [citation]. The distinctions [are] so fine spun and capricious as to be almost incapable of being held in the mind for adequate formulation." 435 U.S. at 433. The "commercial-governmental" distinction in the context of *Noerr-Pennington* is equally finespun and capricious.

Yet such impossible distinctions are exactly what Budget seeks to require with its proposed commercial exception.

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[4]Both the plurality and the dissent quoted with approval identical supporting language from *Indian Towing Co. v. United States*, 350 U.S. 61, 67-68 (1955):

"Government is not partly public or partly private, depending upon the governmental pedigree of the type of particular activity or the manner in which the government conducts it." Plurality, *id.* at 411, fn. 41; dissent, *id* at 433.

Clearly, however, if the existence of *Noerr* protection depends on whether a court ultimately finds the petitioned public officials to be acting in a governmental, as opposed to commercial, role—a decision impossible to predict with any degree of certainty— much protected petitioning activity will be curtailed or foregone in order to avoid the risk of treble damage litigation; and the government will concomitantly lose the benefit of the information that such petitioners would have provided. Thus a commercial exception to *Noerr* would chill the very interests the doctrine is meant to protect. See, *Subscription Television, Inc. v. Southern Cailfornia Theatre Owners Assoc.*, 576 F.2d 230, 233-34 (9th Cir. 1978).

B. There is No Conflict on This Issue Among the Circuits.

Contrary to the impression that Budget seeks to create in the petition, there is no conflict among the courts of appeals respecting the issues decided in this case. As Budget concedes (Petition, p. 18), none of the court of appeals' decisions on which it relies actually uses the term "commercial activities" exception. In fact, none of these cases either stands for the proposition that there is a commercial exception to *Noerr-Pennington* or is in any way inconsistent with the Ninth Circuit's decision in this case.

Budget relies heavily on *George R. Whitten, Jr., Inc. v. Paddock Pool Builders, Inc.*, 424 F.2d 25 (1st Cir. 1970), where the First Circuit refused to extend *Noerr-Pennington* protection to a manufacturer that succeeded in having its product exclusively specified by municipal officials erecting swimming pools under competitive bidding statutes. The *Whitten* court, however, neither created nor rec-

ognized any "commercial activities" exception to *Noerr-Pennington;* nor did it premise its holding on any finding that the public officials were engaged in "commercial" as opposed to "governmental" activities. Rather, the court determined that the state legislatures had already esablished state law and policy by requiring competitive bidding and that the defendant was not trying to alter or influence that policy, but, rather, was trying to subvert state policy by inducing public officials to alter specifications in violation of their statutory duties. *Id.* at 33.

The *Whitten* court also acknowledged the existence of circumstances tending to bring the defendant's activity within the "sham" exception to *Noerr-Pennington*—the use of coercive and deceptive tactics to induce public officials to forsake the responsibilities mandated by state law. *Id.* at 32. Finally, the First Circuit also viewed the defendant's activities in *Whitten* as being directed not at public officials but at private persons acting in their employ, such that the level of public involvement was insufficient to bring the defendant's petitioning efforts within the First Amendment.

Hence, *Whitten* is in no way inconsistent with the Ninth Circuit's decision in this case.

Likewise, there is no conflict between the decision below and *Hecht v. Pro-Football, Inc.*, 444 F.2d 931 (D.C. Cir. 1971). The *Hecht* decision did not establish or recognize any "commercial" exception to *Noerr-Pennington*. Rather, the decisive issue in *Hecht* was one of statutory construction, involving the interplay of the antitrust laws and federal statutes governing the operation of Robert F. Kennedy Stadium. In *Hecht*, the plaintiff challenged the refusal of District of Columbia officials and members of the National Football League to permit the plaintiff to lease the Sta-

dium. In determining the applicability of the *Noerr-Pennington* doctrine, the Court viewed the issue in terms of whether Congress intended the Stadium legislation to be exempted from the antitrust laws:

> "While the leasing of public stadiums to professional sports teams is not a regulated industry, it should not be forgotten that that Stadium Act and the antitrust laws were both enacted by the same legislative body, *i.e.*, the U.S. Congress. Therefore, there arises a similar problem of determining congressional intent as to the applicability or non-applicability of the antitrust laws as we frequently have in the case of a federal government regulated industry." *Id.* at 942.

After a full review of the legislative history of the Stadium Act and other relevant factors, the *Hecht* court concluded that Congress did not intend to enact an exemption from the operation of the antitrust laws. *Id.* at 947. The decision was based entirely on statutory construction and analysis. Not only did the *Hecht* court fail to create a "commercial" exception, it actually characterized the activity before it as "a governmental act of considerable importance to this particular community." *Id.* at 947.

The third case on which Budget relies, *Woods Exploration and Producing Co. v. Aluminum Co. of America*, 438 F.2d 1286 (5th Cir. 1971), provides even less support for Budget's claim. There, the Fifth Circuit found no *Noerr-Pennington* immunity for the defendants' filing of false statements with a Texas regulatory agency. As in *Whitten*, the Court found that the legislature had already established state policy, and that the defendants were trying not to influence state policy, but to subvert it by means of fraudulent practices (*id.* at 1296), thereby bringing defendants' conduct within the sham exception to *Noerr-Pennington* spelled out in *California Motor Transport Co.*

Accordingly, the cases upon which Budget principall relies neither recognize a "commercial exception" to *Noerr Pennington* nor conflict in any way with the Ninth Circuit' decision in this case. And the remaining cases cited b Budget are likewise totally inapplicable.[5]

II.

THERE IS NO REQUIREMENT THAT NOERR-PENNING TON CAN ONLY BE APPLIED WHERE STATE OFFI CIALS HAVE A PARKER IMMUNITY.

Budget does not even purport to have any authorit (other than Judge Renfrew's opinion) for its argument tha the *Noerr-Pennington* doctrine can protect private pa ties who request action by public officials only in thos circumstances where the public officials would be found t have immunity under *Parker v. Brown*. Certainly there i

[5] *Kurek v. Pleasure Driveway & Park Dist.*, 557 F.2d 580 (7th Cir. 1977 *vacated and remanded*, 435 U.S. 992, *reinstated in part*, 583 F.2d 37 (7th Cir. 1978), involved "sham" activity, a fraudulent bid proposal t be used by municipal officials to coerce others into unlawful pric fixing arrangements. *Id* at 593-94. *Corey v. Look*, 641 F.2d 32 (1 Cir. 1981), involved not *Noerr-Pennington*, but rather state actio immunity under *Parker v. Brown*; the only defendants were politic subdivisions of the State of Massachusetts. *City of Mishawaka American Electric Power Co.*, 616 F.2d 976 (7th Cir. 1980), hel that *Noerr* immunity was unavailable under the sham exception; th defendant there had engaged in an abuse of administrative process b knowingly making unlawful filings with the Federal Power Commi sion. *Duke & Company, Inc. v. Foerster*, 521 F.2d 1277 (3d Ci 1975), involved litigation against state subdivisions and public official and did not involve private efforts to petition for governmental a tion; public officials had no *Noerr* immunity in responding to priva petitioning, when they knew such responses constituted unlawful ar unauthorized conduct. *Litton Systems, Inc. v. American Telephone Telegraph Co.*, 700 F.2d 785 (2d Cir. 1983), involved both the sha exception and the rule that the mere filing of tariffs, reflecting privat ly arrived at and implemented anti-competitive plans, did not cons tute protected petitioning. *Israel v. Baxter Laboratories, Inc.*, 466 F.2 272 (D.C. Cir. 1972) is another example of the sham exception, abuse of administrative proceedings.

nothing in any of the opinions of this Court that lends credence to any such argument.

To the contrary, this Court is acutely aware of the fact that *Noerr-Pennington* and *Parker* are *not* opposite sides of a single coin. Thus, in *City of Lafayette*, the court stated that while the *Noerr-Pennington* doctrine is based on the need to protect the First Amendment rights of petition and assembly and the need to have open communication between government and the people, the "state action immunity" doctrine of *Parker v. Brown* has nothing to do with the First Amendment at all. "State action immunity" stems from principles of sovereign immunity and the need for comity between state and federal governments. See 435 U.S. at 399-400. See, also, *State of New Mexico v. American Petrofina, Inc.*, 501 F.2d 363, 368 n.11 (9th Cir. 1974).

Certainly, there is no conceptual basis for automatically turning limitations on the scope of the "state action immunity" doctrine into limitations on the protection that *Noerr-Pennington* affords. A person has a perfect right under the First Amendment to petition public officials to engage in activity that might violate some statute. The fact that the public officials might subject themselves to statutory liability if they were to engage in the requested activity does not destroy the constitutional protection afforded to the private parties who made the request. *Subscription Television, supra; Franchise Realty Interstate Corp. v. San Francisco Local Joint Executive Board of Culinary Workers*, 542 F.2d 1076, 1079 n.2 (9th Cir. 1976).

Nor is there any conflict among the circuits on this point. No court of appeals has ever held that *Noerr-Pennington* immunity must be denied where the petitioned state officials would not enjoy *Parker* immunity if they implement

the action requested of them. Indeed, in the *Whitten* decision upon which Budget so heavily relies, the First Circuit expressly recognized that the two doctrines were not coextensive, and that *Noerr-Pennington* immunity could be available in situations where *Parker* immunity was unavailable:

> "While the two doctrines are often treated as one, we agree with Paddock's separate treatment of each. The two are not coterminous. For example, an unsuccessful attempt to influence government action may fall within the *Noerr-Pennington* immunity, but not the *Parker* immunity. . . . Moreover, because of its First Amendment overtones, the *Noerr-Pennington* immunity is arguably broader than the *Parker* exemption." 424 F.2d at 29, fn. 4.

Moreover, even if there were a commercial exception to *Noerr*, it would not "harmonize" *Noerr* and *Parker*, since *Parker* immunity has nothing whatever to do with whether public officials are acting in a governmental or commercial capacity. This Court not only rejected the commercial activity test in *Lafayette*, but also, in subsequent decisions, made clear that *Parker* immunity depends on an entirely different standard, *i.e.*, whether public officials are acting pursuant to a clearly articulated, affirmatively expressed, and actively supervised state policy to displace competition. *Community Communications Co. v. City of Boulder*, 455 U.S. 40 (1982); *California Retail Liquor Dealers Association v. Midcal Aluminum, Inc.*, 445 U.S. 97 (1980). Hence, public officials may act in a commercial capacity, as Budget would define it, and still enjoy *Parker* immunity under this Court's decisions. Creating a commercial exception to *Noerr* would therefore not ensure that either both doctrines apply in a particular case, or neither does.

Finally, this simply is not a proper case in which to pursue the issue, because even if there were a commercial exception under *Noerr,* it would not apply in this case. As Judge Schwarzer pointed out in his opinion, the activities of the public officials in this case are clearly governmental in nature (521 F. Supp. at 585-87, Pet. App. B-27 to B-31).

> ". . . [D]ecisions concerning the leasing of space at airports tto car rental companies are necessary to implement state legislative policies underlying the maintenance and operation of airports. . . .
>
> * * *
>
> "These statutes [of Washington and Oregon] reflect a clear legislative purpose to make the operation of these airports a governmental activity. . . .
>
> "If the maintenance and operation of a public airport is a governmental activity, there is no rational justification for bifurcating some parts of that activity into a nongovernmental category. . . . Moreover, providing facilities for ground transportation is as essential as providing airline facilities themselves, for an airport which departing passengers cannot conveniently reach and arriving passengers cannot conveniently leave is of little use. . . .
>
> * * *
>
> ". . . [T]he decisions of the public officials did not cease to be governmental by reason of being motivated by economic considerations and sound business judgment. That public activities should be stigmatized because they seek to maximize revenue is wholly without support either in precedent or reason, particularly in a period of economic stringency and governmental retrenchment."

Nor is Judge Schwarzer the only one to have concluded that providing ground transportation services at airports constitutes a "valid governmental function to which the antitrust laws no not apply," *Padgett v. Louisville & Jefferson County Air Board,* 492 F.2d 1258, 1260 (6th Cir. 1974); or that petitioning of public airport officials falls squarely within the protection of *Noerr-Pennington. Mark-Aero, Inc. v. Trans World Airlines, Inc.,* 580 F.2d 288 (8th Cir. 1978).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

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APPENDIX

Revised Code of Washington, Title 14, Aeronautics
Chapter 14.08, Section 020.

Airports a public purpose. The acquisition of any lands for the purpose of establishing airports or other air navigation facilities; the acquisition of airport protection privileges; the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment and operation of airports and other air navigation facilities, and the exercise of any other powers herein granted to municipalities, are hereby declared to be public, governmental, county and municipal functions, exercised for a public purpose, and matters of public necessity, and such lands and other property, easements and privileges acquired and used by such municipalities in the manner and for the purposes enumerated in this chapter shall and are hereby declared to be acquired and used for public, governmental, county and municipal purposes and as a matter of public necessity.

Revised Code of Washington, Title 14, Aeronautics
Chapter 14.08, Section 120.

Specific powers of municipalities operating airports. In addition to the general powers in this chapter conferred, and without limitation thereof, a municipality which has established or may hereafter establish airports, restricted landing areas or other air navigation facilities, or which has acquired or set apart or may hereafter acquire or set apart real property for such purpose or purposes is hereby authorized:

(1) To vest authority for the construction, enlargement, improvement, maintenance, equipment, operation and regulation thereof in an officer, a board or body of such municipality by ordinance or resolution which shall prescribe the powers and duties of such officer, board or body; and such municipality may also vest authority for industrial and commercial development in a municipal airport commission consisting of at least five resident taxpayers of the municipality to be appointed by the governing board of such municipality by an ordinance or resolution which shall include (a) the terms of office not to exceed six years which terms shall be staggered so that no more than three terms will expire in the same year, (b) the method of appointment and filling vacancies, (c) a provision that there shall be no compensation but may provide for a per diem of not to exceed twenty-five dollars per day plus travel expenses for time spent on commission business, (d) the powers and duties of the commission, and (e) any other matters necessary to the exercise of the powers relating to industrial and commercial development. The expense of such construction, enlargement, improvement, maintenance, equipment, industrial and commercial development, operation and regulation shall be a responsibility of the municipality.

(2) To adopt and amend all needful rules, regulations and ordinances for the management, government and use of any properties under its control, whether within or without the territorial limits of the municipality; to provide fire protection for the airport, including the acquisition and operation of fire protection equipment and facilities, and the right to contract with any private body or political subdivision of the state for the furnishing of such fire protection; to appoint airport guards or police, with full police

powers; to fix by ordinance or resolution, as may be appropriate, penalties for the violation of said rules, regulations and ordinances, and enforce said penalties in the same manner in which penalties prescribed by other rules, regulations and ordinances of the municipality are enforced. For the purposes of such management and government and direction of public use, such part of all highways, roads, streets, avenues, boulevards, and territory as adjoins the limits of any airport or restricted landing area acquired or maintained under the provisions of this chapter shall be under like control and management of the municipality. It may also adopt and enact rules, regulations and ordinances designed to safeguard the public upon or beyond the limits of private airports or landing strips within such municipality or its police jurisdiction against the perils and hazards of instrumentalities used in aerial navigation. Rules, regulations and ordinances shall be published as provided by general law or the charter of the municipality for the publication of similar rules, regulations, and ordinances. They must conform to and be consistent with the laws of this state and the rules and regulations of the aeronautics commission of the state and shall be kept in conformity, as nearly as may be, with the then current federal legislation governing aeronautics and the regulations duly promulgated thereunder and the rules and standards issued from time to time pursuant thereto.

(3) Municipalities operating airports may create a special airport fund, and provide that all receipts from the operation of such airports be deposited in such fund, which fund shall remain intact from year to year and may be pledged to the payment of aviation bonds, or kept for future maintenance, construction or operation of airports or airport facilities.

(4) To lease such airports or other air navigation facilities, or real property acquired or set apart for airport purposes, to private parties, any municipal or state government or the national government, or any department of either thereof, for operation; to lease or assign to private parties, any municipal or state government or the national government, or any department of either thereof, for operation or use consistent with the purposes of this chapter, space, area, improvements, or equipment of such airports; to sell any part of such airports, other air navigation facilities or real property to any municipal or state government, or to the United States or any department or instrumentality thereof, for aeronautical purposes or purposes incidental thereto, and to confer the privileges of concessions of supplying upon its airports goods, commodities, things, services and facilities: *Provided,* That in each case in so doing the public is not deprived of its rightful, equal, and uniform use thereof.

(5) Such municipality acting through its governing body may sell or lease any property, real or personal, acquired for airport purposes and belonging to the municipality, which, in the judgment of its governing body, may not be required for aircraft landings, aircraft takeoffs or related aeronautic purposes, in accordance with the laws of this state, or the provisions of the charter of the municipality, governing the sale or leasing of similar municipally owned property. The municipal airport commission, if one has been organized and appointed under subdivision (1) of this section, may lease any airport property for aircraft landings, aircraft takeoffs or related aeronautic purposes: *Provided,* That if there is a finding by the governing body of the municipality that any airport property, real or personal, is not

required for aircraft landings, aircraft takeoffs or related aeronautic purposes, then the municipal airport commission may lease such space, land, area or improvements, or construct improvements, or take leases back for financing purposes, grant concessions on such space, land, area or improvements, all for industrial or commercial purposes, by private negotiation and under such terms and conditions as to the municipal airport commission may seem just and proper: *Provided,* That any such lease of real property for aircraft manufacturing or aircraft industrial purposes or to any manufacturer of aircraft or aircraft parts or for any other business, manufacturing or industrial purpose or operation relating to, identified with or in any way dependent upon the use, operation or maintenance of the airport, or for any commercial or industrial purpose may be made for any period not to exceed seventy-five years: *And provided further,* That any such lease of real property made for a longer period than ten years shall contain provisions requiring the municipality and the lessee to permit the rentals for each five year period thereafter, to be readjusted at the commencement of each such period, if written request for such readjustment is given by either party to the other at least thirty days before the commencement of the five year period in respect of which such readjustment is requested. If in such event the parties cannot agree upon the rentals for such five year period they shall submit to have the disputed rentals for such five year period adjusted by arbitration. The lessee shall pick one arbitrator and the governing body of the municipality one, and the two so chosen shall select a third, and such board of arbitrators, after a review of all pertinent facts may increase or decrease such rentals, or continue the previous rate thereof.

The proceeds of sale of any property the purchase price of which was obtained by the sale of bonds shall be deposited in the bond sinking fund. In the event all the proceeds of sale are not needed to pay the principal of bonds remaining unpaid, the remainder shall be paid into the airport fund of the municipality. The proceeds of sales of property the purchase price of which was paid from appropriations of tax funds shall be paid into the airport fund of the municipality.

(6) To determine the charges or rental for the use of any properties under its control and the charges for any services or accommodations, and the terms and conditions under which such properties may be used: *Provided,* That in all cases the public is not deprived of its rightful, equal and uniform use of such property. Charges shall be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expense of operation to the municipality. The municipality shall have and may enforce liens, as provided by law for liens and enforcement thereof, for repairs to or improvement or storage or care of any personal property, to enforce the payment of any such charges.

(7) To exercise all powers necessarily incidental to the execise of the general and special powers herein granted.

Revised Code of Washington, Title 53, Port Districts
Chapter 53.08, Section 220.

Regulations authorized—Adoption as part of ordinance or resolution of city or county, procedure—enforcement—Penalty for violation. A port district may formulate all needful regulations for the use by tenants, agents, servants, licensees, invitees, suppliers, passengers, customers, ship-

pers, business visitors, and members of the general public of any properties or facilities owned or operated by it, and request the adoption, amendment, or repeal of such regulations as part of the ordinances of the city or town in which such properties or facilities are situated, or as part of the resolutions of the county, if such properties or facilities be situated outside any city or town. The port commission shall make such request by resolution after holding a public hearing on the proposed regulations, of which at least ten days' notice shall be published in a legal newspaper of general circulation in the port district. Such regulations must conform to and be consistent with federal and state law. As to properties or facilities situated within a city or town, such regulations must conform to and be consistent with the ordinances of the city or town. As to properties or facilities situated outside any city or town, such regulations must conform to and be consistent with county resolutions. Upon receiving such request, the governing body of the city, town, or county, as the case may be, may adopt such regulations as part of its ordinances or resolutions, or amend or repeal such regulations in accordance with the terms of the request. Any violation of such regulations shall constitute a misdemeanor which shall be redressed in the same manner as other police regulations of the city, town, or county, and it shall be the duty of all law enforcement officers to enforce such regulations accordingly: *Provided,* That violation of a regulation relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction, except that violation of a regulation equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor.

Oregon Revised Statutes, Chapter 492, Airports and Landing Fields, Section 310.

Authority to establish airports. All municipalities of this state, separately or jointly or in cooperation with the Federal Government or state, may acquire, establish, construct, expand or lease, control, equip, improve, maintain, operate, police and regulate airports for the use of aircraft, either within this state or within any adjoining state, and may use for such purposes any available property owned or controlled by such municipalities or political subdivisions.

Oregon Revised Statutes, Chapter 492, Airports and Landing Fields, Section 320.

Acquisition of lands declared to be for public purpose. All lands heretofore or hereafter acquired, owned, leased, controlled or occupied by municipalities, for the purposes specified in ORS 492.310 are declared to be acquired, owned, leased, controlled or occupied for public and governmental and municipal purposes.

Oregon Revised Statutes, Chapter 778, Port of Portland, Section 025.

Power to engage in certain commercial activities. For the use of the port or for public convenience and the convenience of air transport, shipping, commercial and industrial development of the port and the waterfront of its harbors, rivers and waterways, the port may:

(1) Acquire by purchase, condemnation or other lawful method lands necessary for its use or to be improved for public convenience and the convenience of the air transport, shipping, commercial and industrial development of the port as well as all or any part of the waterfront of its harbors, rivers and waterways.

(2) Acquire by purchase, condemnation or other lawful method lands necessary or convenient for the purpose of depositing or dumping thereon earth, sand, gravel, rock or other material dredged or excavated, in the exercise of any of its powers, from any of the rivers or other waterways or lands within the boundaries or under the control of the port.

(3) Enlarge its tidal area, fill and reclaim lands, and make such disposition by use, conveyance, development or lease of lands so filled or reclaimed as it considers advisable.

(4) Construct, excavate and dredge canals and channels connecting its waterways with one another, with other waterways and with the sea.

(5) Purchase or otherwise acquire, construct, operate, maintain, lease, rent and dispose of airports, and their approaches, wharves, piers, docks, slips, warehouses, elevators, dry docks, terminals, buildings, and all other facilities and aids incident to the development, protection and operation of the port and of the air transport, shipping, commercial and industrial interests of the port, within the port, and collect wharfage, storage and other charges for the use of such facilities.

(6) Own, acquire, construct, purchase, lease, operate and maintain within the port lines of railroad, with sidetracks, turnouts, switches and connections with other lines of railroad, and streets, roads, water mains, sewers, pipelines, and also gas and electric conduits and lines which a utility is unwilling or unable to furnish, within or to or from the boundaries of the port; and carry and transport

freight and passengers thereon and thereover for l
perform lighterage for hire.

(7) Acquire, own, lease, rent, operate, main
dispose of towboats, barges and other vessels for t
portation of cargo or passengers in maritime comr
the Columbia and Snake Rivers and their tributari
in or without the boundaries of this state.

(8) Acquire, own, lease, rent, operate, maint
dispose of unit trains and related facilities for th
portation of bulk commodities to facilities within
from locations within or without the port.